

## **REMARKS**

In view of the following discussion, the Applicants submit that none of the claims now pending in the application is anticipated under the provisions of 35 U.S.C. §102. Thus, the Applicants believe that all of these claims are now in allowable form.

### **I. REJECTION OF CLAIMS 1-20 UNDER THE JUDICIALLY CREATED DOCTRINE OF NONSTATUTORY DOUBLE PATENTING**

Claims 1-20 stand rejected under the judicially created doctrine of nonstatutory (obviousness-type) double patenting as being allegedly unpatentable over claims 1-25 of United States Patent No. 6,321,338. In response, the Applicants agree to file a terminal disclaimer if and when any claim in the present application is held allowable.

### **II. INFORMATION DISCLOSURE STATEMENT**

The Examiner is respectfully urged to consider the information disclosure statements submitted on October 25, 2004 and April 27, 2006. The Applicants submit that these information disclosure statements meet at least the minimum requirements of 37 CFR 1.97 and 37 CFR 1.98. Once the minimum requirements of 37 CFR 1.97 and 37 CFR 1.98 are met, the Examiner has an obligation to consider the information. MPEP 609. The Applicants are aware of no exception to this rule which permits an Examiner to decline to consider an information disclosure statement merely because of its size. The Applicants appreciate that a time constraint is placed on the Examiner and submit that the Applicants are obligated to submit the cited references in accordance with their duty of disclosure of material from related litigation. MPEP 2001.06(c).

### **III. OBJECTIONS TO THE SPECIFICATION**

The Specification is objected to for informalities. In response, the Applicants have amended paragraph [0001], in accordance with the Examiner's request, to indicate that U.S. Patent Application Serial No. 10/254,457, from which the present application claims priority, has matured into U.S. Patent No. 6,711,615.

#### **IV. REJECTION OF CLAIMS 1-20 UNDER 35 U.S.C. § 102**

Claims 1-20 stand rejected as being anticipated by the Vaidya patent (United States Patent No. 6,279,113, issued August 21, 2001, hereinafter "Vaidya"). The Applicants respectfully traverse the rejection.

Particularly, the Examiner's attention is respectfully directed to the fact that Vaidya fails to teach, show, or suggest the novel invention of building a statistical profile from a measure of a plurality of network packets and analyzing the statistical profile to detect suspicious network activity, as recited in the Applicants' independent claims 1, 19, and 20.

By contrast, Vaidya teaches an entirely rule-based system that processes packets against attack signature profiles. This is not the same as processing packets in order to build a statistical profile that can be used to detect suspicious network activity, as clearly recited in the Applicants' independent claims 1, 19, and 20. Specifically, the Applicants' independent claims 1, 19, and 20 recite:

1. Method for performing network surveillance, said method comprising the steps of:  
receiving a plurality of network packets handled by a network entity;  
building at least one statistical profile from at least one measure of said plurality of network packets; and  
analyzing said at least one statistical profile to detect suspicious network activity. (Emphasis added)

19. A computer-readable medium having stored thereon a plurality of instructions, the plurality of instructions including instructions which, when executed by a processor, cause the processor to perform the steps comprising of:  
receiving a plurality of network packets handled by a network entity;  
building at least one statistical profile from at least one measure of said plurality of network packets; and  
analyzing said at least one statistical profile to detect suspicious network activity. (Emphasis added)

20. Apparatus for performing network surveillance, said apparatus comprising:  
means for receiving a plurality of network packets handled by a network entity;

means for building at least one statistical profile from at least one measure of said plurality of network packets; and  
means for analyzing said at least one statistical profile to detect suspicious network activity. (Emphasis added)

As discussed above, Vaidya fails to teach, show, or suggest the novel invention of building a statistical profile from a measure of a plurality of network packets and analyzing the statistical profile to detect suspicious network activity, as recited in the Applicants' independent claims 1, 19, and 20. In fact, no variation of the word "statistical" appears anywhere in the disclosure of Vaidya. As such, the Applicants submit that claims 1, 19, and 20 are not anticipated by the teachings of Vaidya. Therefore, the Applicants submit claims 1, 19, and 20 fully satisfy the requirements of 35 U.S.C. § 102 and are patentable thereunder.

Claims 2-18 depend from claim 1 and recite additional features. As such, and for at least the reasons stated above with respect to claim 1, the Applicants submit that claims 2-18 are also not anticipated by the teachings of Vaidya. Therefore, the Applicants submit claims 2-18 also fully satisfy the requirements of 35 U.S.C. § 102 and are patentable thereunder.

## **V. CONCLUSION**

Thus, the Applicants submit that all of the presented claims fully satisfy the requirements of 35 U.S.C. §102. Consequently, the Applicants believe that all the presented claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

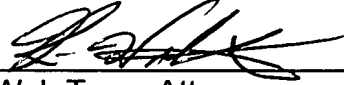
If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

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10/10/07  
Date

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Respectfully submitted,

  
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